IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.5595/1990
Motilal & Anr. Vs. The Board of Revenue & Ors.

Date of Order :: 17th August, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri B.P. Pareek, Advocate for petitioners.
Shri Harshavardhan Nandwana, Dy. Government Advocate

This writ petition is directed against the judgment of the Board of Revenue (for short- the Board) dated 7th March, 1989 and that of Revenue Appellate Authority, Jaipur (for short-Authority) dated 26.7.79 and of the SDO, Kekri dated 27.6.1979 which are all sought to be quashed and set aside by issue of a writ of certiorari. The SDO, Kekri passed the original order dated 27.6.1979 in an injunction suit filed by respondent no.6

(hereinafter referred to as plaintiff-respondent) under Section 92A and 188 of the Rajasthan Tenancy Act, 1955 (for short-the Act of 1955). In the suit, the plaintiff-respondent contended that he was khatedar-tenant of khasra no.1079 measuring 6 bighas and 10 biswas situated in Village Sawar of Tehsil Kekri. The defendant-petitioners were for last 10-15 days trying to unauthorisedly evict him and were threatening to destroy his standing crop. An injunction was, therefore, prayed for restraining them from interfering with possession and peaceful enjoyment of the said property by him and from destroying his crops. The defendant-petitioners contested the suit but the SDO on the basis of the material on record granted desired reliefs and issued injunction order against the

defendant-petitioners on consideration of the fact that the land in dispute was allotted to the plaintiff respondent under Rule 14(4) of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970 (for short-the Rules of 1970). Allotment made in favour of the respondent no.6 under Rule 44 of the Rules of 1970 was cancelled because he violated the condition of sale having transferred the land in favour of Suwalal on 19.7.1971. This order was challenged by the defendant-petitioners before the Authority. The Authority noted that the District Collector on recommendation of the Tehsildar cancelled allotment made to the respondent vide order dated 13th May, 1976. When the allotment itself has been cancelled, alleged sale made by the

respondent no.6 to the petitioners became void and on that basis the petitioners could not claim mutation in their name. On the question of possession also the learned Authority held that the petitioners could not prove their possession by way of any reliable evidence. The appeal was therefore dismissed. Further appeal filed by the petitioners before the Board was also dismissed vide judgment dated 7th March, 1989 in which it was held that the plaintiff-respondent was in possession of the property in dispute as Gair Khatedar tenant and SDO in its order dated 27.6.1979 while decreeing the suit of the respondent no.6 issued injunction order against the defendant-petitioners. It was noted by the Board that the Collector in its order dated 13.5.1976 erroneously

cancelled the allotment of the respondent no.6 by giving wrong khasra no.1079 instead of the correct one which was 1179. The Board also noted that the petitioners have failed to prove any registered sale deed, therefore, the factum of sale has not been proved besides no such pleading was made by the petitioners in the written statements.

I have heard Shri B.P. Pareek, the learned counsel for the petitioners and Shri Harshvardhan Nandwana, the learned Deputy Government Advocate for the respondents.

The learned counsel for the petitioners argued that in the present matter, validity of the allotment was not the important factor to be considered by the court blow. Since the suit filed by respondent no.6 was for permanent

injunction, he was required to establish that he was khatedar tenant on the date of institution of suit and was in possession of the same. Possession of the defendant-petitioners was proved by various documents including report of Tehsildar dated 13.8.1979. It was proved that the land was sold to the petitioners on 19.7.71 and the respondent no.6 also handed over possession of the land to him. The Board has erred in law by ignoring the finding that the allotment of land covered by khasra no.1179 was cancelled and not khasra no.1079 which was disputed land, whereas the Board itself in its earlier order dated 23.9.1987 left this question to be decided by the division bench. It was argued that a suit could be filed and maintain by a khatedar-tenant and

respondent no.6 was only a gair-khatedar and, therefore, the suit filed by him was not maintainable. The Authority erred in law in refusing to acknowledge the transfer of the land in favour of the petitioners on the premise that such a plea was not set up by them in their written statement. It was argued that the stand of respondent no.6 that he got the original land exchanged for khasra no.1179 cannot be accepted in law because Tehsildar not being land holder has no competence to grant / permit exchange of the land. Learned counsel for the petitioners therefore prayed that the writ petition be allowed.

On the other hand the learned Deputy Government Advocate opposed the writ petition, but no one appeared on behalf of respondent no.6 despite service. The

learned Deputy Government Advocate however argued that the matter has been decided concurrently by all the three courts below against the petitioners on facts. The suit for injunction was maintainable only if possession is proved by the plaintiff which has been held otherwise by the courts below. The suit is therefore wholly misconceived. Judgments passed by the courts below do not suffer from any error apparent on the face of the record so as to warrant interference by this Court. It was therefore prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the rival arguments and perused the material on record.

On perusal of the record, it appears that the petitioners originally filed an

application u/s. 65 of the Rajasthan Land Revenue Act for setting aside the order dated 13.5.76 by which the allotment of the lands of aforesaid khasra no.1179 made to the respondent no.6 was cancelled. The Collector by his order rejected the application. The petitioners thereafter filed appeal before the Revenue Appellate Authority who by vide his order dated 26.7.1979 remanded the matter to the Collector to decide the issue again afresh. The Collector on the basis of enquiry made by him held in his order dated 11.12.1980 that the land in question having been sold in violation of the conditions of allotment in favour of respondent no.6, was liable to be set aside. It is this order which was set aside by the Revenue Appellate Authority by its judgment dated 26.7.1979. The

judgment of the Authority was challenged before the Board in appeal by the petitioner. The Board vide its judgment dated 23.9.87 rejected the second appeal filed by the petitioner holding that the land in question was alloted to respondent no.6 and dismissed the appeal. It is thereafter that the petitioners filed review petition before the Board of Revenue. The Board by its order dated 7th March, 1989 dismissed the review petition. All the courts have thus concurrently held that the land, which the petitioners claim to have purchased was the one which was allotted to the respondent no.6 under Rule 14 of the Rules of 1970 on the premise that he was a landless person. It was noted that according to mutation no.313 the land was entered in favour of respondent no.6 on

14.9.1968 and his name was recorded as `gair khatedar' in `jamabandi' of Svt. 2024-27. According to `khasra parivartansheel' of Svt. 2025-28, the land is in possession of the respondent no.6. The application then submitted by the Naib Tehsildar before the Collector stating that the land sold to the petitioner vide order dated 23.8.1976 was that of khasra no.1179 but in fact it came to be wrongly recorded as 1079. It has been concurrently held by the courts that the possession of the land was with the respondent no.6. In the facts of the case when the allotment of the land in question was made to the petitioners under Rule 14 of the Rules of 1970, such land could not be transferred by them in view of the bar contained in Rule 14(8)(b) which provides that the allotted land

shall be liable to be resumed by the State Government without payment of compensation if it is sublet or transferred under the Tenancy Act applicable to Gair Khatedar tenants. In fact the plea that the land which was alloted under the Rules of 1970 was different than the land in question, was not at all raised by the petitioners in their written statements. The petitioners could not give any registered sale deed. It is trite law that the title or right in a landed property are not transferred unless it is proved to have been sold under a duly stamped and executed sale deed. Possession is a question of fact and this fact having been concurrently decided by the courts below, has attained finality and cannot be reopened just because another view is possible on the

facts of the case.

In view of the discussion made above, I do not find any error apparent on the face of the record in any of the impugned orders / judgments. The writ petition being devoid of merits is dismissed with no order as to costs.

(Mohammad Rafiq),J.

Rs/-